IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1094 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SARDARBHAI M DAMOR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1094 of 1994

MR MUKESH R SHAH for Petitioner No. 1-4

MR AJ DESAI Ld. APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 29/08/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE N.G.NANDI)

1. This appeal under Section 374 (2) of the Code of Criminal Procedure ("the Code" for short) is directed against the judgement and order dated 30.9.1994 rendered by the learned Additional Sessions Judge, Panchmahals at Godhara in Sessions Case No.215 of 1993, convicting all the accused (present appellants) for the offences under Section 302 read with Section 34 of the Indian Penal Code and imposing sentence to suffer imprisonment for life and fine of Rs.500/- and in default, 1 month imprisonment. The accused have also been found guilty for the offence under Section 342 of the Indian Penal Code but, no separate sentence has been imposed for the same.

2. The facts leading to the filing of the present appeal shortly stated are that Manglabhai Arjanbhai Damor resident of Village Ranakpur, Taluka-Santrampur, District -Panchmahals along with Rupabhai Bhemabhai had gone to the place of his nephews Sardarbhai Masurabhai Damor and Motibhai Masurabhai Damor at Village Dhingalwada in the evening of 26.3.1993 in connection with the recovery of Rs.20,000/- which amount was earlier lent to his said nephews; that Manglabhai demanded the return of money lent by him, whereupon he was told to take dinner and assured the amount for return of money and stay over night; that at about 11.00 O'clock Manglabhai was called inside the hut which appears to be in the filed of said nephews; that Manglabhai was forcibly made to sit and his mouth was tied with the handkerchief and his eyes were also covered; that thereafter the bunch of dry stalks was fixed on various parts of his body including waist and private part etc. causing burn injuries to Manglabhai; that thereafter he was thrown in the field thinking that Manglabhai has died; that in the early morning his clothes were changed and was taken to the Bus stand by Rupabhai, Sardarbhai and Motibhai in a hammock and by a S.T.Bus, accompanied by Rupabhai Bhemabhai, Manglabhai brought to Village Ranakpur; that from Village Ranakpur, Ratanben and Shana Arjan brought Manglabhai to Cottage Hospital, Lunawada; that after giving primary treatment at Cottage Hospital, Lunawada, Manglabhai was directed to Civil Hospital, Godhara; that he was admitted and treated as an indoor patient for the burn injuries at Civil Hospital, Godhara Hospital, Godhara till 13.5.1993; that thereafter, the injured was brought to Mahi Hospital at Baroda where he remained from 21.5.1993 to 25.7.1993; that thereafter the injured was admitted to V.S.Hospital at Ahmedabad from 3.8.1993 to 28.9.1993; that the injured succumbed to the burn injuries on 19.10.1993 at Village

Ranakpur.

According to the prosecution, in the meantime, application purported to have been sent by injured Manglabhai (Exh.46) came to be received on the basis of which the Inquiry Case No.9 of 1993 came to be registered and inquiry started in connection with the burn injuries to Manglabhai. Thereafter Punjabhai Titabhai Damor gave a regular complaint (Exh.21) against accused no.1 Sardarbhai Masurabhai Damor, accused no.2 Motibhai Masurabhai Damor, accused no.3 Ramiben Motibhai Masura and accused no.4 Amriben Sardarbhai Damar of Village Dhingalwada, alleging burn injuries having been inflicted on Manglabhai. Thereafter, the offence was registered under Section 307 read with Section 114 and Section 342 of the Indian Penal Code being C.R. I No.10 of 1993 and the usual investigation started. On completion of the investigation, charge sheet came to be filed for the aforesaid offence against the accused persons. Thereafter, the injured Manglabhai, who had sustained burn injuries in the incident of 26/27-3-1993, died on 19.10.1993 and Section 302 of the Indian Penal Code came to be added on account of the death of Manglabhai. The accused persons appeared before the Sessions Court to stand trial of the accusations levelled against them. The trial Court framed charge vide Exh.2. The accused denied the charge levelled against them and claimed to be tried. The prosecution in order to bring home the guilt to the accused adduced oral as well as documentary evidence. The statement of the accused persons as regards the circumstances incriminating / emerging from the prosecution evidence came to be recorded under Section 313 of the Code. All the accused persons denied their participation in the incident as alleged by the prosecution. The learned trial Judge appreciating oral as well as the documentary evidence and also considering the statement of the accused recorded under Section 313 of the Code, found all the accused persons guilty of the charges levelled against them and convicted them for the offences under Section 302 read with Section 34 and Section 342 of the Indian Penal Code and sentenced all the accused persons to suffer imprisonment for life and pay fine as abovestated. It is this finding of guilt and the conviction recorded and sentence imposed by the trial Court which have been assailed in the present appeal by the appellants - original accused.

3. We have heard the submissions advanced by Mr.M.R.Shah, learned advocate for the appellants-convict and Mr.A.J.Desai, learned APP for the respondent - State. We have reappreciated the oral as well as the documentary

evidence adduced before the trial Court and also considered the statement of the accused recorded under Section 313 of the Code.

4. It is not disputed that in the evening of 26.3.1993 Manglabhai Arjanbhai of Village Ranakpur had gone to the place of accused at Village Dhingalwada. It is not disputed that Manglabhai Arjanbhai and accused no.1 - Sardarbhai Masurabhai Damor and accused no.2 -Motibhai Masurabhai Damor are the near relations and accused nos.3 and 4 are the wives of aforesaid accused persons respectively. It is also not disputed that during the night intervening 26.3.1993 and 27.3.1993 Manglabhai Arjanbhai received burn injuries at the place of accused persons. It is also not disputed that from Village Dhingalwada Manglabhai by S.T.Bus was brought to his Village Ranakpur in burn condition and therefrom he was first taken to Cottage Hospital, Lunawada. There he was given primary treatment and then, was taken to General Hospital at Godhara where he was admitted and treated as an indoor patient till 13.5.1993. Thereafter Manglabhai was admitted in Mahi Hospital at Baroda on 21.5.1993 and treated till 25.7.1993; that Manglabhai remained in V.S.Hosptial at Ahmedabad from 3.8.1993 to 28.9.1993. It is also not in dispute that Manglabhai died on 19.10.1993 at Village Ranakpur. Admittedly, no post-mortem was carried out on the dead body of Manglabhai Arjanbhai after his death on 19.10.1993. Therefore, admittedly there is no medical evidence in the form of post-mortem report as regards the cause of death of Manglabhai. However, it is not disputed by the defence that Manglabhai did receive burn injuries in the incident which took place during the night intervening 26.3.1993 and 27.3.1993.

5. As seen above, on 27.3.1993 Manglabhai was first brought to Cottage Hospital, Lunawada. The evidence of PW-6 Dr. Amit N. Bhabhar suggests that on 27.3.1993 he was attached to Cottage Hospital, Lunawada; that at about 9.45 a.m. he had examined Manglabhai Arjanbhai Damor, who was brought by his relations without any police yadi; that primary treatment was given to the patient who had 45 to 50% burns whole-body; that after about an hour the patient was transferred to Civil Hospital, Godhara; that injury certificate, Exh.36, issued on 28.6.1994 suggests that Manglabhai Arjanbhai of Village Ranakpur was examined at the Cottage Hospital, Lunawada on 27.3.1993 at 9.45 a.m. and had the following burn injuries.

Burns
Rt & Lt hands 05%

Lt Leg & Rt Thigh 18%
Perineum 01%
Chest & Abdomen 10%
Chest & Back 04%
Lt Thigh 10%

48% 45-50%

It is suggested from the deposition of PW-6, Exh.35 that the patient was conscious and his G.C. (General Condition) was good, and that when the patient was examined witness did not feel that he would die immediately. The witness has denied the suggestion that the patient having 45 to 50% burns, with proper treatment would survive.

6. It is suggested from the evidence of PW-5 Dr. Jamila Mohib Maksud that on 27.3.1993 she was attached to Godhara Civil Hospital as Medical Officer; that on that day one Manglabhai Arjanbhai came with a transfer yadi, Exh.30, from Lunawada Cottage Hospital; that patient was conscious and on examination following burn injuries were noted.

Patient is fully conscious

Burns @ Rt & Lt hands 05%
Burns on Perineum 01%
Burns on Rt Leg 18%
Burns on Lt side Thigh 10%
Burns on Abdomen & Chest(Antour)09%
Burns on Chest (Back) 05%
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upto 45-50%
3rd degree burns

It is suggested that 45 to 50% skin was burnt for which certificate, Exh.29, was issued by the witness. It is stated that any person who gets 45 to 50% burn injuries, infection would develop and if infection develops then such a patient would die.

In the cross-examination it has been stated that on 7.4.1993 the patient had already developed infection and at that time the patient was in the Hospital. It is stated that the witness issued certificate, Exh.13, also exhibited at Exh.29. Certificate, Exh.13 (Exh.29) suggests that the patient had 45 to 50% third degree burns; that the patient was discharged from Civil Hospital, Godhara Hospital, Godhara on 13.5.1993 at the request of the patient. Meaning thereby that the Civil

Hospital, Godhara Hospital, Godhara did not discharge the patient but on the request of the patient discharge was given on 13.5.1993. It may also be noted that on 7.4.1993 the witness noticed the patient having already developed infection.

7. PW-4 Ratanben, wife of Manglabhai stated in her evidence that from Godhara her husband was brought to Baroda and there also no improvement was seen in his health, so Manglabhai was brought to Village Ranakpur and then admitted in Mahi Hospital, Baroda. Exh.42 is the certificate dated 3.12.1993 issued by Dr. Hiren Bhatt of Mahi Hospital, Baroda. Perusal of the same suggests that Mr.Manglabhai Arjanbhai Damor, M-35 (approximately) was admitted in the said Hospital on 21.5.1993; that he was having 40% deep old infected burns with septicemia; that the burns according to the history were 2 and 1/2 months old; that both legs, chest, neck and hands were affected in patches of various size. He had established both knee contradictor, right elbow, all fingers. He was treated with antibiotics, high protein, foods; that the patient had left the Hospital during the treatment against the advise of the doctor on 25.7.1993. It is suggested from the above certificate that the Manglabhai had 2 and 1/2 months old 40% deep infected burns with septicemia and the patient had left the Hospital against the medical advise on 25.7.1993. It can safely be said from the Exh.42 that when the patient against the medical advise left Mahi Hospital, Baroda on 25.7.1993, he had 2 and 1/2 months old 40% deep infected burns with septicemia.

8. It is suggested from the evidence of PW-4 Ratanben Manglabhai that from Baroda, Manglabhai was brought to V.S.Hospital, Ahmedabad and there he was admitted as an indoor patient. The evidence of PW-7 Dr. Milan Doshi suggests that on 3.8.1993 he was attached to V.S.Hospital, Ahmedabad as Medical Officer in Burns Ward; that on that day patient Manglabhai was brought to the witness, who examined him; that Manglabhai was treated as an indoor patient from 3.8.1993 to 28.9.1993; that the injuries noticed have been deposed in the evidence; that in the cross-examination it has been stated that when the patient was brought to V.S.Hospital, Ahmedabad his condition was critical; that when the patient was discharged his condition was good; that the witness has issued the Certificate, Exh.39, wherein the injuries found on the person of the patient has been noted. Undisputedly, Manglabhai died on 19.10.1993 at Village Ranakpur.

9. As per the prosecution case, Manglabhai sustained burn injuries during the night intervening 26/3/1993 and 27/3/1993 at Village Dhingalwada at the place of accused persons. It can be said from the medical evidence referred to above that Manglabhai sustained burn injuries for which he was first taken to Cottage Hospital at Lunawada on 27.3.1993 at about 9.45 a.m; that the primary treatment was given at Cottage Hospital, Lunawada and on the same day, he was shifted to Civil Hospital, Godhara where he remained till 13.5.1993 and during this period of hospitalization, Manglabhai had developed infection which was noticed on 7.4.1993 as deposed by PW-5; that Manglabhai was admitted in Mahi Hospital, Baroda on 21.5.1993 with 40% deep 2 and 1/2 months old infected burns with septicemia. It is also suggested from the evidence of PW-5 that if a person having 45 to 50 % burns and if infection develops then such a person would not survive. The evidence of PW-6 as seen above also suggests that when the patient was examined the witness did not feel that he would die immediately. Means the patient may not survive.

From the above evidence, it can safely be said that in the incident which occurred during the night intervening 26/3/1993 and 27/3/1993 Manglabhai received burn injuries at Village Dhingalwada at the place of accused persons and despite prolonged treatment at Civil Hospital, Godhara, Mahi Hospital, Baroda and V.S.Hospital, Ahmedabad, the victim Manglabhai had developed infection (septicemia) and even when Manglabhai left Civil Hospital, Godhara on 3.5.1993 and Mahi Hospital, Baroda against medical advise on 25/7/1993 he had septicemia. It is stated by PW-7 Dr.Doshi of V.S.Hospital, Ahmedabad that when Manglabhai was brought to V.S.Hospital, Ahmedabad his condition was critical and when discharged from the Hospital, his condition was good but, that would not necessarily mean that the patient was cured of septicemia. As suggested from the evidence, Manglabhai was discharged from V.S.Hospital, Ahmedabad on 28.9.1993 and he died on 19.10.1993 i.e. within 17 days of the discharge from the V.S.Hospital, Ahmedabad.

In our view, evidence on record suggests that Manglabhai Arjanbhai received burns injuries and the same led to septicemia (infection) and Manglabhai died because of the burn injuries on 19.10.1993.

10. Next question which requires consideration is whether accused persons or any of them have caused the burn injuries to Manglabhai during the night intervening 26/3/1993 and 27/3/1993.

It is suggested from the evidence of PW-2 Rupabhai Bhemabhai that on 26.3.1993 at about 7.30 p.m. along with Manglabhai he reached Village Dhingalwada in connection with the demand of money lent by Manglabhai to Motibhai and Sardarbhai; that Manglabhai was told to take dinner and stay over night, and was assured that money would be arranged; that thereafter witness was relaxing in a courtyard; that at about 10.30 p.m. Manglabhai was called inside the house; that thereafter some sound of beating and moans were heard from inside; that the witness saw through the gap of door and found Manglabhai being burnt with the bunch of dry stalks; that accused Ramiben and Amriben had held Manglabhai; that eyes and mouth of Manglabhai were covered with piece of cloth; that seeing this the witness asked as to what is happening, whereupon Motibhai came with Dharia and threatened the witness to kill if he raised shouts; that the witness become frightened and in order to save himself he kept lying but, he could not get the sleep; that Motibhai kept standing with Dharia whereas Ramiben and Amriben had held the legs of Manglabhai; that thereafter both the ladies and Sardarbhai put Manglabhai outside the house and thereafter, they went to sleep; that the witness was threatened by Sardarbhai and Motibhai and asked him not to move; that in the early morning the witness was awakened and clothes of Manglabhai were changed by Motibhai; that Sardarbhai and Motibhai put Manglabhai into hammock and brought him to the S.T.Stand; that thereafter Manglabhai was brought to Village Ranakpur in the S.T.Bus driven by driver Lalabhai; that the witness told Ratanben, wife of Manglabhai, that Motibhai and Sardarbhai have burnt Manglabhai; that thereafter Manglabhai was taken to Lunawada Cottage Hospital. In the cross-examination it has been stated that he had told Punjabhai Bhikhabhai, Ratanben and Arjanbhai, brother of Manglabhai, about the incident. Certain omissions suggested to the witness during the cross-examination, have been proved through the evidence of PW-9 Investigating Officer. It is suggested from the cross -examination of PW-2 as well as evidence of PW-9 that PW-2 did not state in his police statement about the incident as deposed in the evidence. It is also suggested from the evidence of PW-2 as well as PW-9 that PW-2 has given altogether a different version about the incident. It is suggested that the PW-2 omitted to state in his previous statement that he told Ratanben about Motibhai and Sardarbhai having burnt Manglabhai and also Manglabhai having told the accused that they have come in connection with recovery of money and that the accused told Manglabhai to stay over night,

and that the arrangement for money would be made. The witness has also omitted to state that Motibhai stood near him holding Dharia in his hand and that Ramiben and Amriben were holding Manglabhai by his legs. Thus, it will be seen that PW-2 omitted to state material facts in his previous statement which contradictions have been proved through the evidence of PW-9. The natural conduct of PW-2 would be to tell Ratanben as how Manglabhai sustained burn injuries and vise-a-versa.

It is pertinent to note that PW-2, who brought injured Manglabhai in burn condition to Village Ranakpur in the S.T.bus, was asked by PW-8 as to what happened, whereupon PW-2 is stated to have replied to PW-8 that they had gone to the house of sister-in-law of Manglabhai and there Manglabhai has sustained burn injuries. It may be appreciated that if PW-2 had witnessed the incident as deposed in his evidence then he would not fail to tell PW-8 about the participation of the accused persons in the incident of burns to Manglabhai.

11. PW-3 - Punjabhai Titabhai stated in his evidence that on 26.3.1993 in the evening Manglabhai and Rupabhai had gone to the place of the accused persons; that next day morning Ramiben wife of Motibhai Masura had come and informed that Manglabhai is burnt and that they should come to bring him; that they were preparing to go, in the meantime S.T.Bus came from Dhingalwada and driver Lalabhai (PW-8) said that he has brought Manglabhai and that they should sit in the bus and thereafter, Manglabhai was taken to Lunawada Cottage Hospital and from Lunawada he was taken to Civil Hospital, Godhara. On the next day the witness has gone to see Manglabhai and found him burnt on the waist, outer portion of palm and private portion; that the witness asked Manglabhai but he was not conscious; that he used to go to inquire about the health of Manglabhai every second day; that after 5 days Manglabhai regained consciousness and on asking as to how he has been burnt, Manglabhai is stated to have told the witness that Sardarbhai, Motibhai and their wives Ramiben and Amariben had burnt him; that Ramiben and Amriben had held him by his legs and that the accused caused burn injuries to him; that thereafter, the witness gave a complaint Exh.21 on 9.4.1993. In the cross-examination it has been stated that PW-2 Rupabhai had met the witness when Manglabhai was brought to Ranakpur in the S.T.bus on the same day and the witness asked PW-2 about the burn injuries to Manglabhai on the same day.

Exh.21 is the complaint dated 9.4.1993 given by

PW-3. Perusal of the same suggests that on the next day the complainant had gone to the hospital at Godhara to inquire about the health of Manglabhai and found burn injuries caused on the waist and private portion of Manglabhai. The complainant asked Manglabhai as to how he got burnt, whereupon Manglabhai is stated to have told that he had gone to the house of the accused persons in connection with the recovery of money and was told that money cannot be arranged, take dinner and then go and was made to sit; that he was called inside for dinner and was inflicted burn injuries by accused persons. Thus, Manglabhai on the next day of his hospitalization is said to have told complainant about the incident implicating all the accused persons.

It is suggested from the complaint Exh.21 that PW-3 (complainant) had gone to Civil Hospital, Godhara on the next day i.e. on 28.3.1993, whereas the Manglabhai was admitted to the Hospital on 27.3.1993.

12. It may also be recalled that PW-3 in his cross-examination has stated that when PW-2 brought Manglabhai in burn condition to Ranakpur on the same day the witness had asked about the burn injuries caused to Manglabhai and it would be quite natural for PW-3 to ask PW-2 about the burn injuries to Manglabhai. Thus, it is suggested that on 27.3.1993 itself the witness inquired from PW-2 about the burn injuries caused to Manglabhai and on 28.3.1993 he asked Manglabhai Arjanbhai himself about the cause for burn injuries to him in Civil Hospital, Godhara. It is pertinent to note that on 27.3.1993 and on 28.3.1993 PW-3 came to know from eye witness PW-2 and victim himself as to who had caused burn injuries to Manglabhai Arjanbhai. Still, however, Complaint Exh.21 does not see the light of the day till 9.4.1993. No explanation is coming forth from PW-3 as to why the filing of the complaint Exh.21 was delayed till 9.4.1993 even though according to him, injured himself had told him on 28.3.1993 about the accused persons having caused burn injuries to him.

13. PW-4 Ratanben wife of deceased Manglabhai stated in her evidence that in the evening of 26.3.1993, her husband Manglabhai along with Rupabhai Bhemabhai had gone to Village Dhingalwada to the place of Sardarbhai and Motibhai for the recovery of Rs.20,000/- lent to them by her husband; that in the early morning of the next day, Ramiben wife of her nephew, came and informed her that maternal uncle has got burnt at her place; that thereafter the witness called her relations and started preparing to go to Village Dhingalwada; that in the

meantime S.T.Bus came and driver Lalabhai (PW-8) shouted to bring two quilt and to sit in the Bus without westing time as he has brought Manglabhai in burnt condition; that thereafter the witness and all others went near the bus and Ramiben went back to her house. The witness noticed that clothes of her husband were changed as different clothes were put on; that entire portion except half portion of chest, half upper portion of arms and face was burnt. The witness along with her brother-in-law Sanabhai brought injured Manglabhai to Lunawada Cottage Hospital. Therefrom, he was taken to Civil Hospital, Godhara as the condition of her husband was not good and he spoke after 5 days and on asking, Manglabhai is stated to have told that he had gone to the house of Motibhai and Sardarbhai and he was asked to sit saying that the arrangement for money would be made and was told to go after dinner; that thereafter he was called inside the house; that Motibhai and Sardarbhai held him by back portion of his neck and his mouth was tied with handkerchief and all the four burnt him. In the cross-examination it has been stated by her that it would take out half an hour to reach Dhingalwada; that the wife of her nephew had come in the early morning who told that Manglabhai has been kept in courtyard; that other relations were collected; the witness asked Ramiben as to how it happened and within the hearing of others who had collected Ramiben said what she knew. The witness also asked Rupabhai (PW-2) as to what had happened to her husband and he also told what had happened.

It is pertinent to note that one of the accused Ramiben and PW-2 told the witness as to how Manglabhai got burn injuries. It is pertinent to note that PW-4 does not say as to what Ramiben and PW-2 Rupabhai said. All what has been deposed by her is that they told what they knew. Leaving aside accused Ramiben, from the evidence of PW-4, it does not appear that PW-2 Rupabhai told her about the participation of any of the accused persons in the incident in which Manglabhai sustained burn injuries. Had Rupabhai seen the incident as deposed by him in his evidence then he would have certainly told PW-4 about the incident implicating accused persons. But PW-4 does not say PW-2 having told her anything about the incident implicating any of the accused persons.

14. PW-4 has stated in her evidence that she had given one handwritten application putting her thumb mark through Sarpanch of Village Ranakpur. In the deposition also PW-4 has stated that application to be at Exh.23 which bears her thumb mark impression. The evidence of

PW-4 suggests that right from the day Manglabhai was admitted to Civil Hospital, Godhara, she was in the Hospital attending to her injured husband. As pointed out also, PW-3 has stated in complaint Exh.21 that on the next day i.e. on 28.3.1993 he had asked Manglabhai as to what had happened. According to PW-4 Manglabhai was able to speak after 5 days which would mean that on 31.3.1993 or 1.4.1993 Manglabhai was in a position to speak and said about the incident as per PW-4. Perusal of Exh.23 application dated 5.4.1993 by PW-4 addressed to Dy.S.P., Lunawada suggests that her husband was taken to Lunawada Cottage Hospital. Wherefrom he was removed to Civil Hospital, Godhara wherein he has been taking treatment about the burn injuries. It is further suggested from Exh.23 that she raised questions (i) that if Manglabhai had burnt himself, why she was not informed at night (ii) that if Manglabhai had burnt himself then though there were grown up boys in the house why information was sent at about 7.00 O'clock in the next morning. (iii) So she feels that her husband may have been burnt by the accused with intention not to return money. If Manglabhai had told her 5th day i.e. on or around 1.4.1993 and if PW-2 had told her on 27.3.1993 itself as stated above then, in that event in Exh.23 on 5.4.1993 she would not have expressed doubt about the cause of burn injuries to Manglabhai. On the contrary, she would come out with a definite allegation against the accused persons of having burnt Manglabhai but, that is not to be so.

15. PW-8 Lalabhai M. Patel is the driver of the S.T.Bus who brought Manglabhai Arjanbhai in burnt condition from Village Dhingalwada to Ranakpur in the morning of 27.3.1993. It is stated by PW-8 that on 27.3.1993 at about 5.00 O'clock in the morning he had started the S.T.Bus and had come to Village Dhingalwada at about 7.30 O'clock in the morning; that deceased Manglabhai is known to the witness as Manglabhai was also serving as the driver along with the witness; that while witness was at Dhingalwada deceased Manglabhai, accompanied by Rupabhai and Motibhai, had come to the Bus Stand; that Manglabhai was severely burnt and was put in the bus; that Manglabhai was not able to speak; that the witness inquired from Rupabhai (PW-2), whereupon Rupabhai said that Manglabhai had come to the house of his sister-in-law (sister of wife) and there he is burnt; that he brought Manglabhai and Rupabhai to Ranakpur and therefrom along with the brother of Manglabhai he came to Lunawada and admitted Manglabhai in the Cottage Hospital, Lunawada.

It is suggested from the evidence of PW-8 that on

inquiry by him what was told by PW-2 is that Manglabhai had come to the place of his sister-in-law and there he is burnt. Meaning thereby that on inquiry by PW-8, PW-2 does not tell anything against any of the accused persons in connection with the receipt of burn injuries by Manglabhai and only states that Manglabhai got burnt.

Had PW-2 witnessed the incident as deposed then, in that event, he would not fail to tell PW-8 about the incident implicating the accused persons.

16. PW-6 - Dr. Amit Nathabhai has stated in his evidence that when the patient was brought to him he had asked the patient as well as the relation i.e. one lady and 2 to 3 male members, who had brought the patient to the Hospital, as to how he got burnt and it was replied that while taking heat to become warm at the fireside in the midnight on 26.3.1993 he got burnt. Injury Certificate Exh.36 prepared by this witness also contains the case history of accidental burn at midnight on 26.3.1993. It is suggested from Exh.36 that the patient was conscious and his G.C.(General Condition) was good.

Now, if the incident as sought to be suggested by the prosecution implicating the accused persons had really taken place then at least the injured, who was fully conscious and his G.C. (General Condition) was good as per deposition Exh.35 and Exh.36, and/or the relations, who brought the injured to the Hospital, would not miss to state the participation of the accused in the incident implicating the accused persons.

17. PW-9 in his evidence has referred to the statement dated 11.4.1993 stated to have been made by deceased Manglabhai Arjanbhai in Civil Hospital, Godhara in course of investigation and PW-9 deposed about what Manglabhai Arjanbhai on 11.4.1993 stated about the incident implicating the accused persons. It is pertinent to note that the statement dated 11.4.1993 stated to have been given by deceased Manglabhai in Civil Hospital, Godhara to PW-9 does not come forth on record. PW-9 in his evidence has orally stated what deceased Manglabhai on 11.4.1993 told to him about the incident implicating the accused persons. In our opinion, without producing statement dated 11.4.1993 during the trial purported to have been made by deceased Manglabhai to PW-9, what PW-9 orally stated cannot be taken into consideration. In order to suggest that on 11.4.1993 deceased Manglabhai made a statement implicating the accused persons which according to PW-9 was reduced into writing then the same ought to have been produced on

record so as to suggests Manglabhai having implicating the accused persons in the incident. In our opinion, this part of the evidence of PW-9 deserves to be discarded.

18. Exh.46 is the application purported to have been sent by deceased Manglabhai. The same does not bear any signature or thumb mark impression of Manglabhai. All what has been stated at the end of the writing is that signature cannot be appended to this application because of the burn injuries on the hand. It is pertinent to note that the person, who has put this endorsement, has not put his signature below the endorsement suggesting inability to get the signature / thumb mark of Manglabhai. Since there is no signature / thumb mark of the person who made the endorsement as stated above, in our opinion, no significance can be attached to Exh.46.

19. It is suggested from the evidence that Manglabhai remained in Civil Hospital, Godhara from 27.3.1993 till 13.5.1993 i.e. for 1 and 1/2 months. As suggested from the evidence on record on 7.4.1993 PW-5 noticed infection (septicemia). According to complaint Exh.21 on 28.3.1993 Manglabhai was able to speak. According to PW-4 Ratanben after 5 days Manglabhai was able to speak. Inquiry was initiated on the basis of Exh.46 and the Inquiry Case I No.9 of 1993 was registered in Ditvas Police Station. It is surprising that the statement of Manglabhai regarding cause of burn injuries to him has not been got recorded through Executive Magistrate. In fact, the Investigating Agency should have arranged for recording of the dying declaration of Manglabhai through Executive Magistrate. There was ample opportunity available to the Investigating Agency at least from 9.4.1993 till Manglabhai was discharged from Civil Hospital, Godhara on 13.5.1993 if at all the Investigating Agency wanted the dying declaration of Manglabhai recorded.

20. As pointed out above, we do not regard the evidence of PW-2 reliable and trustworthy in view of the contradictions proved on record through the evidence of PW-9 and PW-2 having given altogether a different version in his substantive evidence before the Court. The evidence of PW-4 does not sound satisfactory as in Exh.23 on 5.4.1993 PW-4 having only expressed doubt about the burn injuries caused to her husband Manglabhai despite fact that according to Exh.21 Manglabhai was able to speak on 28.3.1993 and even according to PW-4 he was able to speak after 5 days so as to find the accused guilty for the offence alleged against them and complaint Exh.21 having belatedly filed by PW-3 after more than 11 days

for which there is no explanation coming forth when in Exh.21 complaint (PW-3) has stated that Manglabhai was able to speak on the next day i.e. on 28.3.1993 and had narrated the incident implicating the accused persons.

21. In our opinion, the evidence on record cannot be regarded as sufficient so as to connect the accused persons and hold that the accused persons or any of them have caused burn injuries received by Manglabhai during the night intervening 26.3.1993 and 27.3.1993 and in our view the state of evidence as discussed above would not justify the recording of finding of guilt against the accused persons. The trial Court has erred in finding accused persons guilty for the offences alleged against them. The re-appreciation of evidence, in our opinion, requires interference with the finding of guilt arrived at by the trial Court as the evidence is far from sufficient, satisfactory and reliable so as to base conviction against the accused persons and the appeal deserves to be allowed setting aside the conviction recorded against the accused and the sentence imposed by the trial Court.

22. In the result, appeal is allowed. The conviction recorded and sentence imposed by the trial Court against the appellants -original accused no.1 -Sardarbhai Masurabhai Damor, accused no.2 Motibhai Masurabhai Damor, accused no.3 - Ramiben Motibhai Damor and accused no.4 Amriben Sardarbhai Damor are hereby set aside. Accused no.1 - Sardarbhai Masurabhai Damor and accused no.2 Motibhai Masurabhai Damor are ordered to be set at liberty forthwith if not required in any other criminal case or proceedings.

Accused no.3 Ramiben, wife of Motibhai Masurabhai Damor and accused no.4, Amriben wife of Sardarbhai Masurabhai Damor are on bail. Their bail bonds stand cancelled. Fine if paid by any of the accused persons be refunded.

(N.G.Nandi,J.)

(M.C.Patel,J.)

(vipul)